

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT  
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE  
RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

SEP 15 2008

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	
Respondent,	)	2 CA-CR 2008-0022-PR
	)	DEPARTMENT A
v.	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
JAMES E. COLLINS,	)	Rule 111, Rules of
	)	the Supreme Court
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. CR20020210

Honorable Peter J. Cahill, Judge

REVIEW GRANTED; RELIEF DENIED

James E. Collins

Florence  
In Propria Persona

H O W A R D, Presiding Judge.

¶1 Petitioner James E. Collins seeks review of the trial court's order summarily dismissing as untimely a petition for post-conviction relief Collins filed pursuant to Rule 32, Ariz. R. Crim. P.

¶2 According to our memorandum decision in his direct appeal, *State v. Collins*, No. 2 CA-CR 2002-0478 (memorandum decision filed Oct. 21, 2004), Collins was convicted

of child molestation following a jury trial and sentenced in 2002 to a presumptive, seventeen-year prison term. This court affirmed his conviction and sentence on appeal. Our supreme court denied his petition for review in March 2005, and our mandate issued on May 6, 2005. Pursuant to Rule 32.4(a), Collins then had thirty days, until June 5, 2005, within which to initiate post-conviction proceedings pursuant to Rule 32.

¶3 In March 2007, Collins filed a pro se petition for post-conviction relief, invoking Rule 32.1(g) and challenging his presumptive sentence based on what he claimed was a significant intervening change in the law. Collins broadly alleged that his sentence violated his rights to due process and equal protection based, apparently, on his assertion that an amendment in 2005 or 2006 to A.R.S. §§ 13-701 or 13-702, affected the presumptive sentence for a serious offense. The trial court dismissed the petition as untimely, noting that Collins had not set forth his reasons for the belated filing of his petition as required by Rule 32.2(b).<sup>1</sup>

¶4 In his petition for review, Collins raises different claims than the ones he presented below. Here, he asserts a confrontation-clause question—seemingly the same issue he raised on appeal, born of the trial court’s having allowed Collins’s five-year-old victim to testify at trial via closed-circuit television—and a claim that he was impermissibly found

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<sup>1</sup>When filing an untimely claim, a defendant must “set forth the substance of the specific exception and the reasons for not raising the claim . . . in a timely manner.” Rule 32.2(b). In addition, “meritorious reasons . . . substantiating the claim” must also appear. *Id.* Collins’s petition for post-conviction relief satisfied neither criterion: he did not explain or justify the untimeliness of his petition, and his claim did not appear on its face to have substantive merit.

guilty by only six jurors. Because both of these issues were either raised or raisable on appeal, they are plainly precluded under Rule 32.2(a)(1) and (3). Moreover, this court will not consider for the first time on review even nonprecluded issues that have neither been presented to, nor ruled on by, the trial court. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980).

¶5 Having devoted his petition for review to those two issues alone, Collins has failed to comply with the requirement of Rule 32.9(c)(1)(ii) that such a petition contain “[t]he issues which were decided by the trial court and which the defendant wishes to present to the appellate court for review.” Collins has supplied no basis on which we might find that the court abused its discretion here in summarily dismissing his untimely post-conviction petition. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007) (reviewing court will only disturb grant or denial of post-conviction relief for clear abuse of discretion). In the absence of any such showing, therefore, we grant the petition for review but deny relief.

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JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

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JOHN PELANDER, Chief Judge

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J. WILLIAM BRAMMER, JR., Judge